



Comptroller General
of the United States

Washington, D.C. 20548

Decision

Matter of: ESATEL Communications, Inc.--Reconsideration

File: B-254411.2; B-254412.2; B-254413.2;
B-254414.2; B-254415.2; B-254416.2;
B-254417.2

Date: May 17, 1994

DECISION

ESATEL Communications, Inc. requests reconsideration of our December 2, 1993, decision dismissing its protests against the award of contracts to COMSAT, Inc. under seven different tariff solicitation requirements (TSR)¹ issued by the Defense Information Systems Agency for radar network support services.

We deny the request.

The protested contracts are for support services for the Caribbean Basin Radar Network. The network is comprised of seven operational radar sites located in the Caribbean, Central and South America, Panama, and Florida. Each TSR represented one of the points on the network. While there was no guaranteed contract period, prices--in the form of monthly tariffs--were to be evaluated based on an estimated service life of 72 months. Low price was the primary consideration for award. Three offerors, including ESATEL and COMSAT, participated in the competition. While ESATEL offered the lowest aggregate price for the seven TSRs, the agency determined that the firm's best and final offer (BAFO) did not comply with the solicitation requirements because the prices were based on long-term tariff agreements with foreign carriers, rather than month-to-month tariff rates (i.e., not based on any long-term agreement) as required by the TSRs. The agency advised ESATEL by letter that its prices were unacceptable as they were not "month-to-month" prices, and asked the firm to revise its offer. ESATEL did so, obtaining prices from its foreign carriers for 1-month contracts; these monthly prices were much higher than the monthly prices based on long-term agreements in its first BAFO. As a result, ESATEL's revised BAFO prices were higher than COMSAT's. The agency awarded the seven

¹The applicable TSRs are Nos. AZ06OCT924002B, AZ13OCT924003B, AZ06OCT924004B, AZ06OCT924005B, AZ06FEB934273, AZ06FEB934274, and AZ06FEB934275.

contracts to COMSAT based on that firm's low aggregate price.

In its protest against the award, ESATEL alleged that it was improper for the agency to require ESATEL to offer month-to-month tariffs because the TSRs neither required month-to-month tariffs nor precluded offers based on long-term tariff agreements. We dismissed this protest ground as untimely, as ESATEL learned that the agency interpreted the TSRs differently when it was asked to revise its BAFO, but did not protest that interpretation before the next closing time. See 4 C.F.R. § 21.2(a)(1) (1993).² ESATEL also alleged that the award to COMSAT was improper because COMSAT's monthly prices were based on long-term tariff agreements, just as ESATEL's were in its first BAFO. ESATEL argued that it was improper for the agency to require ESATEL to base its offer on month-to-month tariff prices while allowing COMSAT to offer lower prices based on long-term agreements. We dismissed this protest ground also, as there was no support in the record for ESATEL's position; COMSAT's BAFO in fact was based on month-to-month tariff rates, rather than long-term rates, from the foreign carriers.

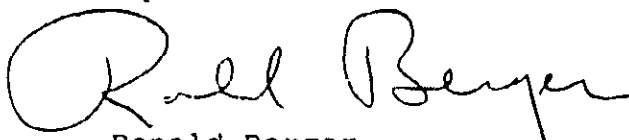
In its reconsideration request, ESATEL alleges that both of the conclusions in our decision were wrong. With respect to the timeliness of its first protest ground--that the agency improperly requested prices based on month-to-month tariffs--ESATEL argues that it had no reason to know that there was anything improper in the agency's request for month-to-month tariff rates because it assumed that all offerors received a similar request; it had no reason to know at the time of the request that COMSAT was being allowed to furnish prices based on long-term tariffs. As to the second protest ground concerning the agency's allegedly unequal treatment of the offerors, ESATEL points to documents in COMSAT's BAFO allegedly showing that COMSAT's prices were in fact based on long-term agreements with the foreign carriers rather than month-to-month agreements.

²Our decision noted that ESATEL's protest also would have been untimely if we had applied the "10 working days" timeliness requirement at 4 C.F.R. § 21.2(a)(2) instead of the "closing date" requirement. See, e.g., The Big Picture Co., B-210535, Feb. 17, 1983, 83-1 CPD ¶ 166. ESATEL learned that the agency would not accept proposals based on long-term tariff rates on July 20, but did not raise this protest issue until August 5, 12 working days later.

Under our Bid Protest Regulations, to obtain reconsideration, the requesting party must either show that our prior decision contains errors of fact or law, or present information not previously considered that warrants reversal or modification of our decision. 4 C.F.R. § 21.12(a). Repetition of arguments previously made or mere disagreement with our decision does not provide a basis for reconsideration. R.E. Scherrer, Inc.--Recon., B-231101.3, Sept. 21, 1988, 88-2 CPD ¶ 274.

ESATEL's request does not provide a basis for reconsideration. We fully considered ESATEL's allegation that COMSAT's BAFO was based on long-term tariff rates; we concluded that, although the BAFO contained quotations from the foreign carriers of both long-term and month-to-month rates, COMSAT's prices were based on the month-to-month rates. While ESATEL disagrees with our conclusion, it has not shown that our conclusion was incorrect.³ Since we believe that conclusion remains valid, the timeliness of ESATEL's first argument is immaterial since the assumption underlying it--that COMSAT was not required to furnish month-to-month rates, is not correct.

The request for reconsideration is denied.


Ronald Berger
Associate General Counsel

³ESATEL alleges that COMSAT's proposed prices for two points on the network are the same as the long-term tariff rates appearing in the foreign carrier quotations for those points. ESATEL is incorrect. For one of these points (the Cayman Islands), the carrier quotation contained only a long-term rate, but COMSAT's BAFO stated that the carrier subsequently agreed verbally to charge the same rate for a month-to-month contract. For the other point (Panama), although the carrier's letter responding to COMSAT's request for a month-to-month quotation refers to a charge for early termination of a long-term contract, it goes on to quote a "month by month" charge. While the "month by month" language does not necessarily indicate the absence of a long-term agreement, when read in context--as a response to COMSAT's express written request for a monthly price that is not based on a long-term agreement--it clearly evinces that meaning.